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INDEPENDENT STATE AUDITOR'S REPORT
ON CERTAIN ACTIVITIES OF THE
PIONEER VALLEY TRANSIT AUTHORITY
JULY 1, 1997 TO JUNE 30, 1999

OFFICIAL AUDIT REPORT
JUL 21 2000
ISSUED BY THE
Department of the State Auditor

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The Pioneer Valley Transit Authority (PVTA) is a regional transit authority servicing 23 communities of the Pioneer Valley. The PVTA was created in 1974 in accordance with Chapter 161B of the Massachusetts General Laws, which provided for Transportation Facilities, Highway Systems and Urban Development Plans. The PVTA receives the majority of its funding through contracts with federal, state, and local governments. Additional funding is provided by fare-box revenues, advertising revenues, and the sale of bus passes and tokens.

Our audit included an examination of the accounts and activities of PVTA under its state contracts. Our objectives were to determine whether PVTA had implemented effective management controls, and to assess PVTA's business practices and compliance with applicable laws, rules, and regulations, as well as the fiscal and programmatic requirements of its state programs and contracts. Except as noted, the results of our review showed that PVTA has adequately implemented effective management controls within its overall business practices, and has complied with all applicable laws, rules, and regulations governing its operations. However, we did note that PVTA has not implemented sufficient corrective action as recommended in our prior audit reports relative to the contract-procurement process.

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Improvement Still Needed over PVTA's Contract Procurement Process: Our follow-up review of the issues disclosed in prior audit reports (No. 92-877-3 and No. 95-877-7) indicated that the PVTA had not satisfactorily addressed the issue relative to rebidding its 1992 fixed-route management contract. We found that deficiencies still existed during the most recent PVTA contracting process. Specifically, we found weaknesses in the procurement process that resulted in (a) the rejection of fixed-route bids by the former PVTA Administrator due to a potential conflict of interest; (b) a flawed selection process because the Designated Rating Process was not followed, and (c) an inadequate selection process for the management operator.



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INTRODUCTION

The Pioneer Valley Transit Authority (PVTA) is a regional transit authority servicing 23 communities of the Pioneer Valley. The PVTA was created in 1974 in accordance with Chapter 161B of the Massachusetts General Laws, which provided for Transportation Facilities, Highway Systems, and Urban Development Plans.

PVTA derives the majority of its funding through contracts with federal, state, and local governments. Additional funding is provided by fare-box revenues, advertising revenues, and the sale of bus passes and tokens.

Summary of Revenue
Fiscal Year Ended June 30, 1998 *

<u>Revenue Source</u>	<u>Fiscal Year</u>
	<u>1998</u>
Federal Subsidies	\$ 607,116
State and Local Subsidies	14,966,862
Interest Income	143,129
Passenger Fares	8,875,694
Advertising	79,175
Gain on Disposal of Assets	<u>47,311</u>
Total Revenues	<u>\$24,719,287</u>

*These revenue amounts are based on the latest available audited financial statements at the time of our audit fieldwork.

Audit Scope, Objectives, and Methodology

The scope of our audit was to examine various fiscal and administrative activities of PVTA during the period July 1, 1997 through June 30, 1999. Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and included such audit procedures and tests as we considered necessary to meet our audit objectives. Our specific objectives were to:

1. Determine whether PVTA had implemented effective management controls, including processes for planning, organizing, directing, and controlling program operations; policies and procedures to ensure that resource use is consistent with laws and regulations; and policies and procedures to ensure that resources are safeguarded and efficiently used.

2. Assess PVTA's business practices and compliance with applicable laws, rules, and regulations; its own internal policies and procedures; as well as the various fiscal and programmatic requirements of its state contracts.

In order to achieve our audit objectives, we first assessed the system of management controls established and implemented by PVTA over its operations. The purpose of this assessment was to obtain an understanding of the control environment and the flow of transactions through PVTA's accounting system, and to use this assessment in planning and performing our audit tests.

Next, we held discussions with PVTA officials; reviewed organizational charts; internal policies and procedures; and all applicable laws, regulations, policies, and procedures. Finally, we examined various agency financial information, including contracts, budgets, cost reports, invoices, and other pertinent financial records to ensure that expenses incurred under PVTA's state contracts were reasonable, allowable, and allocable under these contracts; properly authorized and recorded; and expended in compliance with all applicable laws, rules, and regulations. We also followed up on audit findings noted in prior audits, where applicable.

Our review was not made for the purpose of forming an opinion on PVTA's general-purpose financial statements. We also did not directly assess the overall quality and appropriateness of program services provided by PVTA under its state-funded contracts. Rather, our review was intended to report findings and conclusions on the extent of PVTA's compliance with applicable laws, rules, and regulations regarding the adequacy of PVTA's performance and on specific processes, methods, and internal controls that could be made more efficient or effective.

AUDIT RESULTS

Improvement Still Needed Over PVTA's Contract Procurement Process

Our prior audit reports (No. 92-877-3 and No. 95-877-7) of the Pioneer Valley Transit Authority (PVTA) noted deficiencies in the PVTA's contract procurement process relative to the award of the 1992 fixed-route management contract. As part of our current audit, we examined the progress PVTA has made in addressing our prior audit recommendations.

Our prior audit report (No. 92-877-3) disclosed that the PVTA's selection committee did not adhere to its published evaluation criteria and provided misleading information to proposing entities during its contractor-selection process. The report recommended that the PVTA cancel its fixed-route contract with Transit Express, Inc., (TEI) as of December 31, 1992 and immediately begin a Request for Proposals (RFP) process to allow adequate time to select a transit management firm for 1993.

The Office of the Inspector General (OIG) also conducted a review of the PVTA's 1992 fixed-route contract process, and issued a report dated March 31, 1992. The OIG found that the PVTA contracting process was substantially flawed and that the selection committee failed to follow rules as stated in the RFP. In conclusion, the OIG believed that the continuing failure of the PVTA to appreciate the importance of establishing and following clear rules that promote open and fair competition undermines the confidence of both the public and the vendors who might wish to compete for contracts awarded by the PVTA.

The OIG's report states in part:

The issues my Office has identified in this process are not minor, technical issues. They concern following fundamental rules of fair play. Even a well crafted RFP process is of no value if, in the end, it is discarded when evaluations are performed. Failure to follow clearly stated rules opens the process to waste and abuse.

In a letter to the PVTA Administrator dated October 6, 1992 the Assistant Secretary of the Executive Office of Transportation and Construction (EOTC) indicated that he concurred with our audit recommendations and instructed the PVTA to re-bid the current contract as soon as possible. He also stated that EOTC was eager to assist the PVTA in any way in the RFP process and he intended to monitor

the PVTA's progress closely. The PVTA Administrator responded in a letter dated October 23, 1992 that the Finance Committee of the PVTA Advisory Board approved her recommendation to have an RFP process complete and a new contract in place for July 1, 1993 and to continue with the current contractor on a month-to-month basis while the new process was being developed.

In October 1992, the PVTA contracted with ATE Management and Service Company, Inc., (ATE) to conduct a comprehensive operational analysis of the PVTA's fixed-route and paratransit services. ATE completed its review, submitted its findings, and recommended a service plan to the PVTA in a report issued in September 1993. The ATE study recommended that significant changes in service routes and patterns be phased in over a three-year period, with phases affecting the areas managed by TEI to be completed by September 1995.

Our prior audit report (No. 95-877-7) disclosed that the PVTA had not cancelled its fixed-route contract with TEI and had not begun the RFP process necessary to award a new contract. The PVTA Administrator indicated that the fixed-route contract should not have been rebid until ATE had completed its study, the PVTA had a chance to implement the recommended changes in its fixed-route service, and projected that the contract process with the next operator will be different from the method used in the past when the contract was based on cost plus a fixed management fee. The PVTA expected the next contractor to put together a budget for the service it is asked to run and then live within the budget established under a fixed-cost contract.

Our follow-up review disclosed that the present contract remained a cost plus a fixed-management fee arrangement. Additionally, our follow-up review determined that the issues disclosed in the earlier reports still existed during the most recent PVTA contracting process. Specifically, we found weaknesses in the procurement process, resulting in (a) the rejection of fixed-route bids by the former PVTA Administrator due to a potential conflict of interest, (b) a flawed selection process for choosing a consultant to prepare a RFP and to review the contract bids submitted by the potential operators, and (c) an inadequate selection process for the management operator.

a. Rejection of Fixed-Route Bids by the Former PVTA Administrator Due to a Potential Conflict of Interest: Our follow-up review noted that, in August 1996, the PVTA commenced the first of two attempts to award a contract for the management and operation of its fixed-route system by forming a selection committee and issuing RFPs. After evaluating the proposals, the selection committee made its recommendations for the award of the contract on November 21, 1996. The former Administrator did not accept the selection committee's recommendation and, on December 11, 1996, the former Administrator notified bidders that the PVTA was rejecting all proposals and would be re-issuing the RFP. The reason for the rejection was to avoid a potential conflict-of-interest situation since the former administrator wrote a letter of reference for one of the bidders and was also the person who would be the Appeals Officer if any of the bidders had complaints with the bidding process.

b. Selection of the Review Consultant was Flawed because the Designated Rating Process for the Consultant Proposals Was Not Followed: As noted above, the PVTA rejected the first round of bids for the operator of the fixed-route contract due to a potential conflict-of-interest situation. Before soliciting RFPs for the second round of bids, the PVTA planned to hire a consultant to develop and conduct the second fixed-route RFP process. The RFP to hire a consultant in March 1997 bypassed the in-house procurement function, and instead the former PVTA Administrator acted as the procurement officer. The criteria to be used to evaluate the consultant proposals was specified in the RFP, which stated, in part:

The Contract would be awarded to the most responsible and responsive firm in accordance with the evaluation criteria for this RFP. The Proposals will be evaluated using the rating process outlined below:

- 25% Experience of the firm, particularly with similar services
- 25% Past and present performance of the firm
- 10% Representations made by the firm at the presentation of the Proposal if requested and conducted
- 40% Cost Estimate

The PVTA did not follow the rating process as stated in the RFP that directed the evaluators to use the 100 point rating system noted above. Our review of the proposal evaluations revealed that two evaluators were used, the former PVTA Administrator and a manager from the Connecticut Department

of Transportation (DOT). However, neither evaluator completed the 100 point rating system. The former PVTA Administrator rated only the first two of the four parts having a value of 50 points. The Connecticut DOT employee rated only the first part having a value of 25 points and made additional comments without assigning point values to the other sections of the evaluation criteria. The failure of the evaluators to follow through and completely evaluate the proposals on the basis outlined in the RFP resulted in a flawed evaluation process for the consultant's \$15,200 contract dated March 28, 1997.

This flawed evaluation process led to our conducting a more detailed review of the seven submitted proposals. Contrary to the RFP which stated that the contract would be awarded in accordance with the evaluation criteria for this RFP, our review indicated that the most responsible and responsive firm may not have been chosen to conduct the process for the selection of contract management services for the PVTA's fixed route. Specifically, our testing indicated the firm chosen had not submitted a proposal that qualified as responsive and its proposal did not meet the minimum criteria required by the RFP. In addition, failure to perform the evaluations on the basis specified in the RFP may well have led the PVTA to questionable decisions.

c. Inadequate Selection Process for the Management Operator: Our review of the selection of the management operator found that certain key elements of the proposal ratings were unavailable (e.g., summary rating sheets), and certain federally-required contract clauses were not included in the contract of the management operator.

With regard to the first issue, we were unable to review or reconstruct the PVTA's selection process because PVTA could not locate and provide us with certain key documents of the proposal ratings for our review. Effective August 31, 1997, the PVTA entered into a contract with TEI for the management of PVTA's fixed-route system as recommended by the review consultant. The essential documentation that PVTA could not locate and was unable to provide for our review were financial statements, the rating sheets of the evaluators, and TEI's suggested revisions to the contract.

PVTA's RFP for consulting services states that proposers shall permit authorized representatives of PVTA to inspect a proposer's data, facilities, equipment and records relating to this RFP. Additionally,

the RFP for Contract Management Services for the Fixed Route Transit System of the PVTA states, "any exceptions to the terms and conditions of the contract should be noted in the proposals."

As a part of our audit, we compared the draft contract contained in the RFP with the contract between the PVTA and TEI effective August 31, 1997. This \$394,000 contract signed on March 24, 1999 contained several material changes not published, as required by the RFP, nor disclosed to the competing proposers. (The lengthy time between the effective date and the signature date was caused by a breakdown in the negotiating process).

With regard to the second issue of federally required contract clauses, a 1997 Triennial Review of the PVTA dated March 1998 prepared for the Federal Transit Administration (FTA) by a review team concluded that the proposed contract for fixed-route service did not include 21 of the 23 FTA-required clauses. Examples of the clauses that were not made a part of the contract included Drug and Alcohol, Energy Conservation, Clean Air, and Buy America policies. The PVTA responded to the report as follows:

Within 60 days of issuance of the final report, PVTA will develop and implement procedures to include FTA-required clauses in procurement documents. PVTA will submit documentation of the procedures to the FTA regional office.

Another review team conducted a Procurement System Review of the PVTA dated October 20, 1998 for the FTA. This review disclosed that the PVTA did not have a current agreement with its fixed-route subcontractor, TEI. Because of a breakdown in the negotiating process for a new contract, the working relationship between PVTA and TEI was based on a previous agreement that was not current or legally binding. Therefore, PVTA was not in compliance with the requirements of the Master Agreement and Circular 4220.1D to provide all applicable FTA requirements to its subcontractor. The Master Agreement contains the standard FTA terms and conditions governing the administration of the PVTA. Because it is the responsibility of the grantee to ensure that third-party contractors comply with FTA requirements, the PVTA is unable to evaluate the performance of TEI without a fully executed current contract specifying the applicable requirements. The review also noted that the TEI recommended changes to the contract

included in its RFP response that were not addressed by PVTA. However, the PVTA could not locate this documentation for our review.

In its response to the Triennial report dated March 1998, PVTA responded that it would incorporate procedures to ensure the existence of contracts with major subcontractors and include all of the appropriate clauses. The PVTA also stated it has developed a contract matrix to ensure that third parties are aware of federal requirements. The PVTA indicated it would implement these corrective actions by December 1998.

Our follow-up review noted the PVTA had developed a matrix of the required federal clauses by July 1998. However, we found that these clauses were not incorporated in the TEI contract signed in March 1999.

Recommendation: The PVTA should immediately develop and implement improved procurement procedures for the new RFP process relating to the management of its fixed-route service contract, which expires on August 31, 2000. As a part of this process, the PVTA should ensure that these newly developed procurement procedures and evaluation criteria are fairly, openly, and consistently applied to all competing firms. Additionally, the PVTA should ensure that future contracts contain all the FTA required contract clauses.

Auditee's Response:

The PVTA shall seek to amend its current operating agreement with Transit Express, Inc. ("Transit Express") in order to incorporate by reference the applicable Federally Required Contract Clauses. The PVTA anticipates that such amendment will be acceptable to Transit Express.

Given time constraints, the PVTA intends to renew its operating agreement with Transit Express for an additional year and to reserve judgment on any renewal in excess of one year. The contract specifies that it may be renewed for up to two years beyond the initial three-year term.

On expiration or non-renewal of the operation agreement with Transit Express, the PVTA intends to retain the services of a consultant, perhaps a Boston law firm, to implement and carry out the procurement process for a fixed-route bus operator for Hampden County. The PVTA is committed to ensuring that newly developed procurement procedures and evaluation criteria will be fairly, openly and consistently applied to all competing firms.

